**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.23 OF 2006

New India Assurance Co. Ltd. ...Appellant
Vs.
Smt Satibai Jethanand Kundnani & Ors. ...Respondents

Shri S.M. Vidyarathi for the Appellant.
Shri A.M. Kulkarni for the Respondent Nos.1 to 4.
Shri G.S. Hegde & Associate for the Respondent No.8.

**CORAM : ABHAY S. OKA, J.**

**DATE ON WHICH JUDGMENT IS RESERVED : MAY 05, 2006.**

**DATE ON WHICH JUDGMENT IS PRONOUNCED: JUNE 05, 2006.**

**JUDGMENT:**

1. The submissions of the Advocates appearing for the parties were fully heard on 04th May, 2006 and 05th May, 2006. Considering the fact that the Appeal arises out of a claim for compensation under Section 166 of the Motor Vehicles Act, 1988 arising out of a fatal accident, the Appeal was taken up for final hearing at admission stage. The Appellant-Insurance Company is the insurer of the tempo involved in the accident.

2. The Appellant-New India Insurance Company Ltd. has taken exception to judgment and award dated 20th September, 2005 passed by the learned Member of the Motor Accident Claims Tribunal at Sangli. The Claim Petition was filed by the Respondent Nos.1 to 4 who

are the legal representatives of late Jethanand Sidumal Kundnani. The said Jethanand was a resident of Sangli and was running a grocery shop in Panchshil Nagar, Sangli. The Respondent No.1 is the widow of the said Jethanand. The Respondent Nos.2 and 4 are the sons of Jethanand and the Respondent No.3 is his daughter. On 24th January, 1997 at about 11.30 p.m. the said Jethanand was returning to his house on a bicycle after closing his shop. He was proceeding by Madhav Nagar - Sangli Road. At that time, a bus owned by the Respondent No.8 - the Maharashtra State Road Transport Corporation came from behind the said bicycle of the Jethanand in a fast speed. When the said bus was overtaking the bicycle of the said Jethanand, a tempo came in a high speed from the opposite side. There was a collision between the tempo and the bus. As a result of the impact, the tempo gave a dash to Jethanand and thereafter landed in a ditch which was on eastern side of the road. Jethanand alongwith his bicycle were also thrown in the ditch. The said Jethanand died on the spot.

3. The Respondent Nos.5 and 6 who are the owners and the driver respectively of the tempo filed written statement denying the averments made in the Claim Petition. According to the case the Respondent Nos.5

and 6, while the driver of the bus was overtaking the bicycle, he could not control the bus and gave a dash to the driver side of the tempo. According to them, there was a failure of brakes of the tempo and therefore the tempo went away and turned turtle on the right side. According to them it was the bus which gave dash to the deceased. Their contention is that the Respondent No.7 who was the driver of the bus was negligent.

4. A written statement was filed by the present Appellant resisting the claim made by the claimants in their Petition. The driver of the bus and the State Road Transport Corporation (the Respondent Nos.7 and 8 respectively) filed a written statement contesting the claim. They contended that the tempo driver was driving his tempo in a rash and negligent manner and he has caused the accident. According to the case of the Respondent Nos.7 and 8, the tempo dashed against the State Road Transport bus and went further and gave a dash to the bicycle of the deceased.

5. The learned Member of the Tribunal held that the accident occurred due to rash and negligent driving on the part of the driver of the tempo. The learned Member also dealt with contention raised by

the Appellant regarding breach of terms and conditions of the policy. The learned Member held that Appellant and the Respondent Nos.5 and 6 were liable to pay compensation of Rs.4,14,000/- to the Respondent Nos.1 to 4 together with interest at the rate of 12% per annum on sum of Rs.3,64,000/- from the date of Application till the date of realisation. Certain directions were given for investment of the amounts.

6. Shri Vidyarathi appearing for the Appellant pointed out that as a defence covered by sub-section 2 of section 149 of the said Act of 1988 was raised by the Appellant, the present Appeal was maintainable. He submitted that the Tribunal has committed an error by taking the monthly income of deceased at Rs.4,000/-. He submitted that the multiplier of 12 could not have been adopted as the age of the deceased was 49 years. He submitted that interest at the rate of 12 per cent per annum could not have been granted and the maximum interest can be 7.5% per annum. He submitted that sum of Rs.25,000/- could not have been awarded on account of pain and suffering. He submitted that it was a case of composite negligence on the part of the driver of the bus and the driver of the tempo. Shri Kulkarni appearing for the Respondent Nos.1 to 4 supported the impugned judgment and award

and contended that the compensation awarded is reasonable and no interference was called for. Shri Hegde appearing for the Respondent No.8 supported the impugned judgment and award and pointed out that there was no negligence on the part of the driver of the bus.

7. I have considered the submissions. A defence was raised by the Appellant that there was a breach of terms and conditions of the Insurance Policy on the part of the owner of the tempo. The burden was on the Appellant to prove that there was a breach on the part of the insured. However, the Appellant-Company has not led any evidence to discharge the burden.

8. The learned Member of the Tribunal has considered the evidence of the driver of the bus. The said driver Shrirang Lokhande described the manner in which the accident took place. It is pertinent to note that the driver of the tempo i.e. the Respondent No.6 herein did not step into witness box. The learned Member of the Tribunal has therefore drawn adverse inference against him. The learned Member of the Tribunal found that immediately after the accident the driver of the tempo was subjected to medical examination on the request made by the police. The

learned Member of the Tribunal has recorded a finding that a certificate issued by a authority after examination of the driver of the tempo discloses that at the relevant time the driver had consumed alcohol and a substantial quantity thereof was found in the blood of the driver. After carefully scrutinising the version of the driver of the bus, the learned Member of the Tribunal accepted the said version especially when the driver of the tempo who was a party to the Claim Petition did not step into witness box and it was found that at the relevant time he had consumed alcohol. The learned Judge considered the spot panchnama and the fact that the tempo alongwith bicycle were thrown in the ditch. The learned Member of the Tribunal held that it was the driver of the tempo who was driving a vehicle under the influence of alcohol was negligent and it was due to his negligence that accident took place. There is no reason to disagree with the said finding especially when the driver of the tempo failed to enter the witness box.

9. So far as income of the deceased is concerned, according to the son of the deceased, he was possessing a licence to run a grocery shop. The original licence has been produced in evidence. According to the version of the son of the deceased he

used to spent sum of Rs.5,000/- per month on his family. After perusing the school leaving certificate of the deceased, the learned Judge noted that at the time of the accident the age of deceased was 49 years. The learned Judge on the basis of the licence at Exhibit 52 accepted that the deceased was carrying on grocery business. After considering the evidence on record, the learned Judge came to the conclusion that the income of the deceased must be approximately Rs.4,000/- per month. It is well settled that while calculating the quantum of compensation payable in respect of fatal accident there is always an element of guess work. The learned Judge deducted one third amount from the income on account of the personal expenditure of the deceased. The learned Judge therefore, calculated the multiplicand at Rs.32,000/-. In my view, no interference can be made with the finding of the Tribunal that the income of the deceased at the time of his death was approximately Rs.4,000/- per month considering the fact that the deceased was running the grocery business. The multiplicand of Rs.32,000/- per year taken by the learned Member is reasonable as he has made a deduction of one third of the income on account of personal expenses of the deceased.

10. The real controversy is regarding multiplier of 12 applied by the Tribunal. In the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Ors. reported in (2005)6 Supreme Court Cases Page 236, the Apex Court referred to law laid down in some of its earlier Judgments regarding computation of multiplier and held that the maximum multiplier will be 18 which will apply to age group of 21 years to 25 years. In case of a deceased having age of 38 years the Apex Court applied multiplier of 12. In another decision of the Apex Court in the case of Managing Director, T.N.S.T.C. Ltd. Vs. K.I. Bindu & Ors. reported in (2005)8 Supreme Court Case Page 473, the Apex Court in case of a victim whose age was 34 years applied multiplier of 13. The Apex Court, as observed earlier, held that highest multiplier of 18 can be applied in case where age of deceased is between 21 years to 25 years. In case where deceased was of 34 years the Apex Court applied multiplier of 13 and in case of deceased of 38 years multiplier of 12 has been applied. It is, thus, obvious that multiplier of 12 applied by the Tribunal in the present case is extremely on the higher side as the age of the deceased was 49 years at the time of the accident. Thus, considering the age of the deceased, multiplier of 9 will have to be applied. It

must be noted here that the two sons and daughter of the deceased had attended majority on the date of accident. Taking multiplier of 9 and the multiplicand of Rs.32,000/-, the compensation amount comes to Rs.2,88,000/-.

11. The learned Member has awarded sum of Rs.30,000/- on account of pain and suffering and expenses incurred on the last rites of the deceased. The Apex Court in the case of Sarla Dixit & Anr. Vs. Balwant Yadav & Ors. reported in (1996) 3 Supreme Court Cases, Page 179 held that the conventional figure of Rs.15,000/- will have to be taken on account of loss of estate and consortium, funeral expenses etc. while calculating compensation in a fatal accident claim. The same is the view taken by the Apex Court in another case of General Manager, K.S.R.T.C. Vs. Susama Thomas & Ors. reported in (1994) 2 Supreme Court Cases, Page 176. Thus, to the sum of Rs.2,88,000/-, a sum of Rs.15,000/- will have to be added. Thus, total compensation payable will be Rs.3,03,000/-.

12. Turning to the dispute regarding rate of interest, it must be noted here that the Apex Court in the case of Abati Bezbaruah Vs. Deputy Director,

General Geological Survey of India & Anr. reported in (2003) 3 Supreme Court Cases Page 148 held that considering the fact that the accident was of the year 1990 and considering the prevailing rates, interest at the rate of 9% per annum deserves to be granted. In another decision of the Apex Court reported in 2001 A.C.J. 428 (Kaushnuma Begum & Ors. Vs. New India Assurance Company Ltd.), the Apex Court held that though in earlier decisions interest at the rate of 12% was found to be reasonable, with change in economic conditions and policy of Reserve Bank of India the interest rates have been lowered. The Apex Court therefore held that interest at the rate of 9% per annum will be payable. In this view of the matter, the rate of interest fixed under the impugned award will have to be at the rate of 9% per annum. Hence, the impugned judgment and award will have to be modified. In the light of the quantum of compensation fixed by this Court, the Tribunal will have to pass appropriate order, if any, regarding investment of the amount at the time of disbursement of the compensation to the claimants.

13. Hence, I pass the following order:

A] The impugned judgment and award is modified.

The operative part of the impugned judgment and award is substituted by the following:

"(i) The Application of the Applicants is partly allowed with proportionate costs against the Opponent Nos.1 to 3.

(ii) The Opponent Nos.1 to 3 shall jointly and severally pay an amount of Rs.03,03,000/- including the amount which is already paid on account of no fault liability to the Applicants.

(iii) The Opponent Nos.1 to 3 shall jointly and severally pay interest at the rate of 9 per cent per annum on the said amount of Rs.03,03,000/- from the date of Application i.e. 19th March, 1997 till the realisation of the amount."

B] The Appellant- Insurance Company will comply with the award within a period of eight weeks from today. If the Insurance Company has already deposited the compensation amount as per the impugned judgment and award, the Appellant-Insurance Company will be entitled

to necessary refund.

C] The learned Member of the Tribunal will pass the appropriate order regarding distribution of the compensation amount to the Respondent Nos.1 to 4 and for investment, if any, of the amount.

D] There will be no orders as to costs in this Appeal.

**JUDGE**

. After the judgment is pronounced Shri Vidyarathi for the Appellant pointed out that a sum of Rs.25,000/- has been deposited by the Appellant in this Court.

. Office is directed to transfer the said amount to the appropriate Tribunal.

**JUDGE**